

## Planning Commission Work Session – June 15, 2021

On June 15th, the Planning Commission will hold another in a series of work sessions on the package of proposed changes to the City's zoning and development code, known as the Unified Development Code (UDC).

The proposed changes address a variety of issues that have arisen since the last update to the UDC in 2019 and range from minor housekeeping amendments to policy-related changes that respond to concerns from the community and changes in State law.

The focus of the June 15th work session will be on proposed amendments to SRC Chapter 400 (Use Classifications) and SRC Chapter 270 (Nonconforming Situations).

A general overview of the proposed changes is provided below. For the specific proposed text of the amendments, please refer the Salem Revised Code (SRC) chapters included with this summary. New language proposed to be added is identified by red underline and existing language proposed to be deleted is identified by ~~red strikethrough~~.

### Modifications to Similar Use Determination Process (SRC Chapter 400)

SRC Chapter 400 is the chapter in the development code that provides descriptions of all the various uses identified in the City's zoning districts. If you look at a zone and see that a specific use is allowed (*such as Retail Sales*), you can go to Chapter 400 to find a specific description of that use which identifies its functional characteristics and provides examples of specific types of uses that fit within that use category (*such as book stores, grocery stores, clothing stores, etc.*).

In some instances, however, a proposed use may not clearly or cleanly fit into a use category identified under SRC 400. In those cases, SRC Chapter 400 provides for a **Similar Use Determination** process whereby a person can apply for a formal interpretation to identify the use category in Chapter 400 that the proposed activity is most similar to. Once the appropriate use category has been identified, that information can be used to determine whether the use is allowed in a zone.

The current similar use determination review process outlined in SRC Chapter 400 is in need of improvement. Amendments are therefore being proposed to make the process clearer and align the review procedures more closely with those associated with land use application under SRC Chapter 300 (*such as clear standards for submittal requirements, public notice, appeals, etc.*).

## **Amendments to Nonconforming Situations Chapter (SRC Chapter 270)**

Amendments are also proposed to SRC Chapter 270 (Nonconforming Situations). The Nonconforming situations chapter of the code establishes requirements relating to what can be done on property that was lawfully established and conformed to the applicable use and development standards of the code at one time but doesn't any longer due to factors such as the property being annexed into the City or the standards of the code changing.

Proposed amendments to SRC 270 include:

- Clarifying that acquisition of public right-of-way is one way in which developments or existing properties can be made nonconforming.
- Allowing a duplex to be constructed on a nonconforming lot of record in a residential zone. Currently only a single-family dwelling is allowed to be constructed on a nonconforming lot of record in a residential zone.
- Identifying what uses are allowed on nonconforming lots of record in non-residential zones. Currently the code only addresses nonconforming lots of record in residential zones and does not address nonconforming lots of record in non-residential zones.

## **CHAPTER 400. USE CLASSIFICATIONS**

**(Note: The following amendments are excerpts from SRC Chapter 400. The complete chapter can be found via the below link)**

[https://library.municode.com/or/salem/codes/code\\_of\\_ordinances?nodeId=TITXUNDECO\\_UDC\\_CH400USCL](https://library.municode.com/or/salem/codes/code_of_ordinances?nodeId=TITXUNDECO_UDC_CH400USCL)

### **Sec. 400.015. Classification of uses.**

- (a) *Use.* The principal activity, or principal activities, that occur upon a property establish the use. A principal activity falls within a specific use when the principal activity possesses the characteristics of the use, and the broader use category the use falls within.
- (b) *Accessory uses.* Accessory activities that are clearly incidental, subordinate to, dependent upon, and conducted in support of one or more principal activities on a property are accessory uses. Accessory uses must be located on the same lot, and must be operated under the same ownership, as the principle activity. To determine whether an activity is clearly incidental, subordinate to, dependent upon, and conducted in support of another activity, the following factors shall be considered:
  - (1) The location and arrangement of the activity on the site, and/or its arrangement within a building, in comparison to other activities on the property;
  - (2) The relative amount of site or floor space and equipment devoted to the activity in comparison to other activities on the site and/or in the building;
  - (3) The relative amounts of sales from the activity in comparison to other activities on the property;
  - (4) The relative number of employees for the activity in comparison to other activities on the property;
  - (5) Whether the activity would likely be found independent of the other activities on the property;
  - (6) Whether the activity aids or contributes to other activities on the property or carries on the function of other activities on the property;
  - (7) The relative number of vehicle trips generated by the activity in comparison to other activities on the property;
  - (8) Whether the activity will have its own signage;
  - (9) How the activity advertises itself in comparison to other activities on the property; and
  - (10) The hours of operation of the activity in comparison to other activities on the property.
- (c) *Application of regulations.* When there are multiple uses on a property, each use must comply with the regulations that are specific to that use. Unless otherwise provided under the UDC, accessory uses are considered part of the use and are subject to the same regulations as the use.

~~(d) *Similar use determination.*~~

- ~~(1) *Purpose.* The purpose of a similar use determination is to provide a process to classify an activity as falling within a particular use when that activity cannot be readily classified as falling within a particular use, or when that activity possesses characteristics of two or more uses.~~

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- ~~(2) Procedure. In lieu of the procedures set forth in SRC chapter 300, similar use determinations shall follow the procedures set forth in this subsection.~~
- ~~(3) The Planning Administrator may make similar use determinations. Requests for similar use determinations shall be submitted on a form provided by the Planning Administrator. The applicant for a similar use determination shall provide a written explanation why the applicant believes the activity falls within a particular use.~~
- ~~(A) The Planning Administrator shall issue a written determination identifying the use the proposed activity falls within. Within ten business days after the Planning Administrator has provided notice to the applicant of the adoption of the similar use determination, the applicant may submit a request for review of the Planning Administrator's decision. The review shall be by the Hearings Officer. The Hearings Officer's review shall be based on the application, the written explanation provided by the applicant, and any other material submitted by the applicant to the Planning Administrator. The Hearings Officer may endorse or refute the Planning Administrator's decision. If the Hearings Officer refutes the Planning Administrator's decision, the Hearings Officer shall identify which use the activity falls under. The Hearings Officer's decision shall be issued no later than 15 business days after the request for review was submitted to the Planning Administrator. The Hearings Officer's decision upon review shall be the final decision for the City.~~
- ~~(B) In lieu of issuing a determination under subsection (d)(3)(A) of this section, the Planning Administrator may refer the request for similar use determination to the Hearings Officer, in which case the Hearings Officer shall make a written determination identifying the use the proposed activity falls within.~~
- ~~(4) Notice. Notice of adoption of a similar use determination shall be provided within ten days of the date a similar use determination is issued. Notice shall be:~~
- ~~(A) Provided to the applicant, all City-recognized neighborhood associations, and anyone who has submitted a written request to receive notification of formal interpretations; and~~
- ~~(B) Posted on the City's website.~~
- ~~(5) Record of similar use determinations. The Planning Administrator shall keep a registry of all similar use determinations. The registry shall be available to the public and shall set forth:~~
- ~~(A) The street address or other easily understood geographic reference to the property subject to the similar use determination;~~
- ~~(B) A description of the decision made; and~~
- ~~(C) The date of the decision.~~

~~(d)(e) Activities within public right-of-way. Unless otherwise provided in this chapter, activities allowed within the public right-of-way are not considered a "use" for purposes of classification under this chapter.~~

(Prior Code, § 400.015; Ord. No. 31-13)

### **Sec. 400.016. Similar use determination**

- (a) Purpose. The purpose of a similar use determination is to provide a formal interpretation process to classify an activity as falling within a particular use when that activity cannot otherwise be readily classified as falling within a particular use set forth in this chapter, or when that activity possesses characteristics or two or more uses.
- (b) Procedure. In-lieu of the procedures set forth in SRC chapter 300, similar use determinations shall follow the procedures set forth in this section.
- (c) Review authority. The review authority for similar use determinations shall be the Planning Administrator.

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(d) Submittal requirements. Requests for similar use determinations shall be submitted on a form provided by the Planning Administrator and shall be accompanied by the following:

(1) A written statement:

(A) Identifying the proposed activity for which the similar use determination is being requested;

(B) Describing the nature and characteristics of the proposed activity; and

(C) Identifying the use under this chapter which the applicant feels is most similar in function and characteristics to the activity proposed;

(2) Any additional supporting information the applicant deems necessary to provide evidence in support of the activity falling within a particular use; and

(3) Payment of the applicable application fee pursuant to SRC 110.090.

(e) Public notice. Public notice is required for similar use determinations and shall include a comment period of 14 days from the date notice is mailed. Public notice shall be by first class mail and shall be provided as follows:

(1) The City shall mail notice of the application within 10 days after the application is deemed complete. An affidavit of mailing shall be prepared and made part of the file.

(2) Mailed notice shall be sent to:

(A) The applicant(s) and/or authorized representative(s);

(B) All City-recognized neighborhood associations;

(C) Anyone who has submitted a written request to receive notification of formal interpretations; and

(D) The following, when the similar use determination is specific to a particular property:

(i) The owner of record of the subject property;

(ii) The addresses of the subject property, based on the City's current addressing records;

(iii) Property owners of record, as shown on the most recent property tax assessment roll, of properties located within 250 feet of the subject property; and

(iv) Addresses, based on the City's current addressing records, within 250 feet of the subject property.

(3) Mailed notice shall include:

(A) The names of the applicant(s) and any representative(s) thereof;

(B) The type of application, and a concise description of the nature of the request;

(C) The following additional information, when the similar use determination is specific to a particular property:

(i) The owner(s) of the subject property;

(ii) The street address or other easily understood geographical reference to the subject property;

(iii) A vicinity map identifying the subject property with relation to nearby major streets or other landmarks; and

(iv) The proposed site plan, if any.

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- (D) A statement that the application and all documents and evidence submitted by the applicant are available for review and that copies can be obtained at a reasonable cost;
  - (E) A brief summary of the decision-making process for the application;
  - (F) The date, time, and place that written comments are due, and the person to whom the comments should be addressed;
  - (G) A statement that comments received after the close of the public comment period will not be considered;
  - (H) A statement that issues which may provide for the basis for an appeal to the Oregon Land Use Board of Appeals must be raised in writing prior to the expiration of the comment period and with sufficient specificity to enable the applicant and Review Authority to respond to the issue;
  - (I) A statement that subsequent to the close of the public comment period a decision will be issued and mailed to everyone entitled to the initial notice of the application and anyone who submitted written comments on the application; and
  - (J) The name and contact information for the staff case manager.
- (f) *Decision.* The Review Authority shall review the request and make a determination classifying the proposed activity within the use set forth in this chapter that the proposed activity is most similar to. The Review Authority's determination shall:
- (1) Be based on the facts contained within the record and a comparison of the functional characteristics of the proposed activity to the relevant functional characteristics, examples, and exceptions associated with the uses set forth in this chapter; and
  - (2) Be in the form of a written order containing findings stating the facts relied upon in rendering the determination and explaining the justification for the decision.
- (g) *Notice of decision.* Notice of the decision for a similar use determination shall be mailed within seven days from the date the Review Authority adopts the written order. An affidavit of mailing shall be prepared and made part of the file.
- (1) The notice of decision shall be mailed to:
    - (A) The applicant(s) and/or authorized representative(s);
    - (B) All City-recognized neighborhood associations;
    - (C) Anyone who submitted written comments during the comment period;
    - (D) Anyone who has submitted a written request to receive notification of formal interpretations; and
    - (E) The following, when the similar use determination is specific to a particular property:
      - (i) The owner of record of the subject property;
      - (ii) The address of the subject property, based on the City's current addressing records;
      - (iii) Property owners of record, as shown on the most recent property tax assessment roll, of properties located within 250 feet of the subject property; and
      - (iv) Addresses, based on the City's current addressing records, within 250 feet of the subject property.
  - (2) The notice of decision shall include:
    - (A) A brief description of the application;
    - (B) A brief summary of the decision;

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- (C) A statement of the facts relied upon;
  - (D) The date the Review Authority's decision becomes effective, unless appealed;
  - (E) The date, time, and place by which an appeal must be filed, a brief statement explaining how to file and appeal, and where further information may be obtained concerning the appeal process;
  - (F) A statement that only those persons with standing may appeal the decision; and
  - (G) A statement that the complete case file is available for review. The notice shall state where the case file is available and the name and telephone number of the staff case manager to contact about reviewing the case file.

(h) Appeal.

- (1) Generally. Unless appealed, the decision of the Review Authority on a similar use determination shall be the final decision of the City.
- (2) Standing to appeal. Only the applicant, anyone who provided written comments during the comment period, and anyone entitled to notice of the decision have standing to appeal the decision on a similar use determination.
- (3) Procedure. Except as otherwise provided in this section, appeals of similar use determinations shall be subject to the procedures set forth under SRC 300.1010 through SRC 300.1040.
- (4) Review Authority. The review authority for an appeal of a similar use determination shall be the Hearings Officer.
- (5) Public notice. Public notice for an appeal shall be provided as set forth under SRC 300.1040(b) except that posted notice is only required for an appeal of a similar use determination that is specific to a particular property.
- (6) Decision. The appeal body may endorse or refute the decision. If the appeal body refutes the decision, the appeal body shall identify which use under this chapter the proposed activity is more appropriately classified within. The decision of the appeal body shall be in the form of a written order containing findings stating the facts relied upon in rendering the determination and explaining the justification for the decision. The written order shall be mailed to:
  - (A) The appellant;
  - (B) The applicant(s) and/or authorized representative(s), if other than the appellant;
  - (C) The owner of record of the subject property, when the similar use determination is specific to a particular property;
  - (D) All City-recognized neighborhood associations;
  - (E) Anyone who appeared either orally or in writing before the close of the public record on the appeal; and
  - (F) Anyone who requested to receive notice of the decision.
- (7) The decision of the Review Authority on appeal shall be the final decision of the City. Appeal of the City's final decision is to the Oregon Land Use Board of Appeals.
- (i) Effect of similar use determination. Similar use determinations which have become final shall control future application and enforcement of the UDC, unless superseded by subsequent similar use determinations. When a similar use determination has been made in reference to a specific property, the determination shall apply generally throughout the City and not just to that property.
- (j) Record of similar use determinations. The Planning Administrator shall keep a registry of all similar use determinations. The registry shall be available to the public and shall set forth:

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- (1) A description of the decision made;
  - (2) The date of the decision; and
  - (3) The street address or other easily understood geographic reference to the property subject to the similar use determination, when the similar use determination request is specific to a particular property.



## **CHAPTER 270. NONCONFORMING SITUATIONS**

### **Sec. 270.001. Purpose.**

The purpose of this chapter is to bring nonconforming uses, development, and lots or parcels into compliance with the UDC, and minimize the impacts of such nonconforming status.

(Prior Code, § 270.001; Ord. No. 12-12)

### **Sec. 270.005. Nonconforming uses.**

- (a) *Generally.* A nonconforming use is any use on real property that was lawfully established under the applicable City or county land use regulations at the time the use was established, but which is no longer allowed due to the adoption of, or amendment to, the City's land use regulations, or annexation of the property into the City. A nonconforming use is a lawful use, and may be continued on the real property until terminated as provided in subsection (e) of this section.
- (b) *Ordinary repairs and maintenance.* Except as otherwise provided in this section, buildings and structures occupied by nonconforming uses may be repaired and maintained.
- (c) *Extension, alteration, and expansion or substitutions of nonconforming uses.* If approved pursuant to subsection (d) of this section:
  - (1) A nonconforming use in a portion of a building may be extended into other portions of that building.
  - (2) A building or structure occupied by a nonconforming use may be structurally altered or enlarged for the benefit of such use.
  - (3) One nonconforming use may be substituted for another nonconforming use.
- (d) *Application for extension, alteration, and expansion or substitution of a nonconforming use.*
  - (1) *Applicability.* Except as provided in subsection (c)(2) of this section, a nonconforming use shall not be extended, altered, expanded, or substituted for another nonconforming use without receiving approval as provided in this section.
  - (2) *Procedure type.* An application for extension, alteration, expansion, or substitution of a nonconforming use is processed as a Type III procedure under SRC chapter 300.
  - (3) *Submittal requirements.* In addition to the submittal requirements for a Type III application under SRC chapter 300, an application for extension, alteration, expansion, or substitution of a nonconforming use shall include:
    - (A) A site plan, of a size and form and in the number of copies meeting the standards established by the Planning Administrator, containing the following information:
      - (i) The total site area, property lines with dimensions, and orientation relative to north;
      - (ii) Street names;
      - (iii) Location and distance to property lines of all existing and proposed buildings, structures, fences, driveways, parking areas, and off-street loading areas;
      - (iv) Location of all existing and proposed landscape areas, with an indication of square footage;

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- (v) The location of all trees and vegetation required to be protected pursuant to SRC chapter 808;
  - (vi) The layout of all existing and proposed parking areas, indicating the total number of spaces and the dimensions of the stalls, aisles, driveways, and turnaround areas;
  - (vii) Existing and proposed use of main and accessory buildings;
  - (viii) Buildings or surface features that are to be removed;
  - (ix) Height of proposed and existing structures; and
  - (x) Location of any surface features such as vegetation, creeks, drainage fields, topography, railroad tracks, power lines and/or any other information pertinent to the proposal.
- (B) A completed Trip Generation Estimate for the proposed development, on forms provided by the City.
- (4) *Criteria.* An application for the extension, alteration, expansion, or substitution of a nonconforming use shall be approved if the following criteria are met:
- (A) The proposed extension, alteration, enlargement, or substitution of use is consistent with the general development character of the surrounding area;
  - (B) The degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable at the property line will not be increased by the proposed extension, alteration, enlargement, or substitution of use;
  - (C) The number and kinds of vehicular trips will not exceed the maximums typical for the zoning district within which the nonconforming use is located;
  - (D) The amount and nature of outside storage, loading, and parking will not be increased or altered by the proposed extension, alteration, enlargement, or substitution of use so as to cause further impacts;
  - (E) The hours of operation for the proposed extension, alteration, enlargement, or substitution of use will not be altered or increased beyond those of the existing nonconforming use; and
  - (F) If the proposal includes the alteration or enlargement of a building or structure, the alteration or enlargement complies with the applicable development standards of the UDC and all other applicable laws, ordinances, and regulations.
- (e) *Termination of nonconforming use.*
- (1) A nonconforming use shall terminate if the building, structure, or land ceases to be occupied for the nonconforming use, or a use approved under SRC 270.005(d), for any reason for a continuous period of one year.
  - (2) A nonconforming use dependent upon a building or structure that is declared a "dangerous building" pursuant to SRC 56.200 through 56.390 shall be deemed terminated upon the date the order declaring the building or structure a dangerous building becomes final.
  - (3) A nonconforming use dependent upon a building or structure that is substantially damaged or destroyed by any cause, to the extent that the cost of repair or restoration would exceed 60 percent of the building or structure replacement cost using new materials and conforming to current building codes, shall be deemed terminated upon the date of such damage or destruction. Cost of repair or restoration, and replacement cost, shall be determined by the Building Official. The Building Official's determination is appealable as provided in SRC 20J.240 through 20J.430 for contested case proceedings.
  - (4) A nonconforming use dependent upon a building or structure that is redeveloped or renovated to the extent that the cost of redevelopment or renovation exceeds 60 percent of the building or structure

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replacement cost using new materials and conforming to current building codes shall be deemed terminated upon the date such redevelopment or renovation commences. Cost of redevelopment or renovation shall be determined by the Building Official. The Building Official's determination is appealable as provided in SRC 20J.240 through 20J.430 for contested case proceedings.

- (5) A nonconforming use which has terminated shall not be re-established.

(Prior Code, § 270.005; Ord. No. 12-12; Ord. No. 31-13)

### **Sec. 270.010. Nonconforming development.**

- (a) *Generally.* Nonconforming development is any development which met the applicable City or county development standards imposed at the time the development was constructed, but which no longer complies with development standards due to the adoption of, or amendment to, the City's land use regulations, ~~or the~~ annexation of the property into the City, or the acquisition of public right-of-way. A nonconforming development may be continued until the development's nonconforming status is terminated as provided in subsection (d) of this section.
- (b) *Ordinary repairs and maintenance.* Nonconforming development may be repaired and maintained.
- (c) *Alteration and enlargement.* Unless the alteration or enlargement is undertaken in connection with a nonconforming use under 270.005(a) nonconforming development may be altered or enlarged provided such new development complies with all applicable development standards of the UDC and all other applicable laws, ordinances, and regulations.
- (d) *Termination of nonconforming development.*
- (1) Nonconforming development that is declared a "dangerous building" pursuant to SRC 56.200 to 56.390 shall be deemed terminated upon the date the order declaring the building or structure a dangerous building becomes final.
  - (2) Nonconforming development that is redeveloped or renovated to the extent that the cost of redevelopment or renovation exceeds 60 percent of its replacement cost using new materials and conforming to current building codes shall be deemed terminated upon the date that such redevelopment or renovation commences. Cost of redevelopment or renovation shall be determined by the Building Official. The Building Official's determination is appealable as provided in SRC 20J.240—20J.430 for contested case proceedings.
  - (3) Nonconforming development that is substantially damaged or destroyed by any cause to the extent that the cost of repair or restoration of the development would exceed 60 percent of its replacement cost using new materials and conforming to current building codes shall be deemed terminated upon the date of such damage or destruction. Cost of repair or restoration, and replacement cost, shall be determined by the Building Official. The Building Official's determination is appealable as provided in SRC 20J.240—20J.430 for contested case proceedings.
  - (4) Nonconforming development which has terminated shall be brought into conformity with the applicable development standards or removed.

(Prior Code, § 270.010; Ord. No. 12-12)

### **Sec. 270.015. Nonconforming lots or parcels of record.**

- (a) Nonconforming lot or parcel of record means any unit of land which met the applicable legal requirements for a land division at the time it was created, but which no longer meets the standards due to the adoption of, or amendment to, the UDC, ~~or the~~ annexation of the property into the City, or the acquisition of public right-of-way.

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(b) A nonconforming lot or parcel of record in any residential zone may be used for the construction of a single family dwelling or duplex, ~~provided that the development complies with all applicable standards or criteria of the UDC, other than~~ regardless of lot standards or density.

(c) A nonconforming lot or parcel of record in any non-residential zone may be used for any use that is allowed in the zone, regardless of lot standards.

(Prior Code, § 270.015; Ord. No. 12-12; Ord. No. 31-13)

### **Sec. 270.020. Nonconforming manufactured dwellings in manufactured dwelling parks.**

Notwithstanding the provisions of SRC 270.005, any nonconforming manufactured dwelling, including associated accessory buildings or structures, in a manufactured dwelling park may be repaired, altered, or replaced provided such repair, alteration, or replacement complies with applicable development standards of the Oregon Manufactured Dwelling and Park Specialty Code, the Oregon Manufactured Dwelling Installation Specialty Code, and all other applicable laws, ordinances, and regulations.

(Prior Code, § 270.020; Ord. No. 12-12; Ord. No. 31-13)